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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

JESSE BLACKBURN,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA.

W. H. MITCHELL, JR.,
TRUMAN HOBBS,
Counsel for Petitioner.

306-311 Professional Center,
Montgomery, Alabama.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA.

Jesse Blackburn prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Alabama, entered in the above entitled case on November 16, 1954. Subsequent to this judgment of the Court of Appeals of Alabama, petitioner unsuccessfully sought review in the Supreme Court of Alabama.

OPINIONS BELOW.

The opinion of the Circuit Court of Colbert County, Alabama, is unreported. The opinion of the Court of Appeals of Alabama (R. 215) is reported at 88 So. 2d 199. The decision of the Supreme Court of Alabama refusing to grant the petition for certiorari (R. 229) and its decision denying the application for a rehearing (R. 231) is reported at 88 So. 2d 205.

JURISDICTION.

The judgment of the Court of Appeals of Alabama was rendered on November 16, 1954 (R. 214). Petitioner applied to the said Court of Appeals for a rehearing, which was denied (R. 224). Petitioner thereupon petitioned the Supreme Court of Alabama for a writ of certiorari to review the judgment of the Court of Appeals of Alabama. The petition for certiorari was denied on April 12, 1956. Petitioner made application for rehearing to the Supreme Court of Alabama. This application was denied on June 21, 1956 (R. 231). The effect of the action of the Supreme Court of Alabama was to make final the judgment of the Court of Appeals of Alabama in so far as the state remedies for petitioner were exhausted. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1257.

Petitioner in the trial court and in the Court of Appeals contended that his alleged confession was involuntary. In the trial court petitioner repeatedly objected to the efforts of the State of Alabama to introduce into evidence his alleged confession. Petitioner objected that the confession was not voluntary and that petitioner lacked the mental competence to make a voluntary confession (R. 26, 75, 88, 94, 95, 96, 97, 117). The trial court admitted the confession into evidence and the petitioner excepted to the ruling of the trial court (R. 81).

The question of the voluntary nature of the confession was fully presented and ruled upon by the trial court on the motion for new trial (R. X, XI, XV, XVI). It was argued to the Alabama courts in seeking appellate review. The Court of Appeals of Alabama stated (R. 221):

> "Of course, the duty of determining whether a confession is voluntary rests within the discretion of the trial court, and its decision allowing a confession in evidence will not be disturbed unless an abuse of such

discretion appears. We conclude the wide discretion vested in this court is not shown here to have been abused and there was no error in admitting the confession in evidence."

QUESTIONS PRESENTED.

1. Does a conviction based on a confession obtained after nine hours of questioning from one over leave from an insane hospital and adjudged mentally incompetent at the time of his release from said hospital and subsequently adjudged insane by the sanity board appointed by the State of Alabama to examine him and adjudged probably insane at the time of his confession by members of the same sanity board, offer that fundamental fairness required by the due process of law clause of the 14th Amendment of the Constitution of the United States?

2. Was the federal question adequately raised below and passed upon by the Alabama courts?

STATUTES INVOLVED.

There are no statutes involved. Section 1 of the 14th Amendment of the United States Constitution is involved.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT.

Petitioner was charged with the capital offense of robbery. He pleaded not guilty and not guilty by reason of insanity. He was tried, convicted and sentenced to twenty years imprisonment. His conviction was based on an alleged confession, which petitioner has contended at every stage of his trial and appeal was obtained involuntarily.

Petitioner is a young Negro, 25 years of age at the time of his alleged crime on April 19, 1948. He had been a member of the armed forces during World War II, and was discharged in 1944 as unfit for military service because of a permanent mental disability (R. 124, 125). Pursuant to the recommendation of the Army Medical Board, petitioner was transferred to an insane hospital with a diagnosis of dementia praecox, simple type, and a history of hallucination and defective judgment and insight (R. 126).

Petitioner remained under treatment in this hospital from September, 1944, until February, 1948. In September, 1944, petitioner was adjudged 50% mentally incompetent. In November, 1946, he was adjudged 100% mentally incompetent (R. 132, 133). On February 14, 1948, petitioner was released from the hospital for a ten-day leave in the care of his sister. When petitioner did not return from this leave, he was automatically discharged from the hospital on May 24, 1948. His medical record states that on his discharge "the diagnosis of schizophrenic reaction, paranoid type, remains unchanged, and he was considered incompetent at the time of his release" (R. 128).

In April, 1948, while petitioner was several days over leave from the insane hospital, he left his home in Chicago to attend a funeral in Alabama. The crime with which

petitioner was charged occurred while he was on this trip to Alabama.

Petitioner was arrested in Indiana and was brought to Colbert County, Alabama. On May 8, 1948, petitioner allegedly confessed to the crime for which he was convicted. The crime was a brutal one committed in a rural area and involved armed assault on the white operator of a rolling country store. One of the deputy sheriffs, who questioned petitioner and who wrote the alleged confession, testified that petitioner "talked sensible" at the time of his confession (R. 87). This same deputy conceded that thereafter while petitioner was still in jail awaiting trial, he observed the behavior of the petitioner which "showed signs of insanity" (R. 85). The Sheriff of Colbert County thereupon reported to the Circuit Judge of Colbert County that there existed reasonable grounds for believing petitioner insane (R. 31). The Circuit Judge of Colbert County had petitioner examined as to his sanity by three reputable local physicians and other witnesses. These physicians and witnesses concurred in the view that there was reasonable ground for believing petitioner insane (R. 31).

Petitioner was thereupon on July 26, 1948, delivered to the Superintendent of the Alabama State Hospitals, who was directed to convene a commission on lunacy to determine petitioner's mental condition. On January 6, 1949, the lunacy commission made a unanimous adjudication that petitioner was insane at the time he was delivered to the state mental hospital in July, 1948. The Commission was further unanimous in its judgment that petitioner "was insane at the time of the commission of the crime for which he is charged" (R. 34). Two of the three doctors composing the commission on lunacy stated that in their opinion he was mentally ill and incompetent on May 8, 1948 (R. 40-41, 54), this being the date of the alleged

confession. The testimony of the third doctor on the commission was somewhat confused. He testified, however, that he did not think petitioner had lucid intervals (R. 66). He also testified that petitioner was probably insane on April 19, 1948 (R. 62), but on cross-examination he stated that he though petitioner's mental condition on April 19, 1948, was normal (R. 67).

On the findings of the Commission of lunacy, the Circuit Court of Colbert County permanently committed petitioner to the Alabama State Hospital for treatment of the insane until "restored to his right mind" (R. 35). Petitioner remained under treatment in the insane hospital for more than four years, from July, 1948, to October 7, 1952, at which time he was ajudged mentally competent to stand trial and was returned to Colbert County (R. 35, 36). At the time of petitioner's trial, he had spent his entire adult life in an insane hospital except for a few weeks of absence without leave.

Petitioner testified that he had no recollection of events leading up to the crime, the crime itself, his arrest in Indiana, his detention in the Colbert County jail, his confession, and finally that he had no recollection of his commitment to the Alabama State Hospital or the early months or years of treatment at said hospital (R. 164, 165, 166). Petitioner denied the truth of the confession, acknowledged that the signature on the confession appeared to be his, but stated that he could not recall anything about the confession. Petitioner's prior medical history attested that he suffers recurrently from "complete amnesia concerning his behavior" (R. 124).

Petitioner's confession was not even purportedly transcribed in petitioner's words or in question and answer form.

Petitioner's alleged confession on May 8, 1948, was obtained after nine hours of questioning by one or more law

enforcement officers who were coming "in and out" (R. 84, 85). The questioning was uninterrupted except for a break of approximately one hour while the examining officers went to supper (R. 184). Most of the questioning took place in a room four feet by six feet or six feet by eight feet, in which were petitioner and as many as three law enforcement officers (R. 84). The law enforcement officers could not recall whether they were wearing or exhibiting their guns at the time of the questioning (R. 86). Petitioner allegedly confessed at approximately 11 o'clock at night.

Petitioner objected to the introduction into evidence of the alleged confession on the ground that it was not voluntary, that it was not shown that petitioner had the mental capacity to be a witness, that it affirmatively appeared that petitioner was insane at the time of the making of the alleged confession (R. 26, 88). When the State of Alabama offered petitioner's alleged confession into evidence, petitioner's counsel objected as follows:

> "The defendant objects because the corpus delicti has not been proven; and the defendant can be shown not to have had the mental capacity to be a witness on May 8, 1948, and we offer to show that in conformity with Section 439, Title 7 of the Code of Alabama, with reference to the statement the gentlemen is talking about, and we want to offer to prove those facts before the court rules on the admissibility of the statement, and we more specifically offer to show in evidence by depositions of Dr. Tarwater and Dr. Rowe that this man did not have the metnal capacity on May 8, 1948, to be a witness and make a statement, and we object on the further ground that no predicate has been laid, and it is illegal and incompetent, and we offer to prove that on May 8, 1948 this man was suffering from a mental disease known as Schizophrenic of the Paranoid type, a form of Dementia

> Praecox, and that such disease deprived him of the mental capacity to be a witness against himself, and we offer to show through the testimony of the duly qualified officer of the Veterans' Administration, who is also custodian of the records of the Veterans' Administration, that this man had also suffered from the disease since 1944, and that subject to order of this court, a lunacy commission was appointed to observe the defendant and such commission reported to this court that the man was mentally incompetent on May —or before May 8, 1948. We offer to offer this on Voir Dire as to whether or not it was a voluntary statement" (R. 26).

After the voir dire, the trial court admitted the confession into evidence over petitioner's objection (R. 81).

These objections to the introduction of the confession were repeated many times at the trial (R. 26, 88, 94, 95, 96, 97, 100, 117). Despite petitioner's objections, the trial court admitted the confession into evidence and made the determination that the confession was voluntary. Based on the alleged confession, a conviction was obtained, and petitioner was sentenced to serve twenty years in prison.

In the Court of Appeals of Alabama petitioner argued that the trial court committed reversible error in admitting the alleged confession. The Court of Appeals affirmed the conviction, stating that the duty of determining whether a confession is voluntary rests within the discretion of the trial court, "and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears." **Blackburn v. State**, 88 So. 2d 199, 205. The Court of Appeals concluded by stating that the wide discretion vested in the trial court was not shown to have been abused and there was no error in admitting the confession in evidence. Petitioner applied

for a rehearing before the Court of Appeals and the petition for rehearing was denied.

Petitioner petitioned the Supreme Court of Alabama for certiorari and the petition was denied. 88 So. 2d 205. Petitioner sought a rehearing before the Supreme Court of Alabama and the Supreme Court of Alabama denied the application for a rehearing.

REASONS FOR GRANTING THE WRIT.

I.

This case raises fundamental and important questions as to the protection extended by the Fourteenth Amendment of the Constitution of the United States to incompetent or insane persons whose convictions rest on alleged confessions obtained while such persons are suffering from insanity or mental incompetency.

The Court of Appeals of Alabama was of the opinion that such wide discretion is vested in the trial court in its determination of whether a confession is voluntary that it could not be shown that the court's discretion was abused in admitting petitioner's confession. If there was no abuse of discretion in this case it is difficult to conceive of a circumstance under which appellate review can give meaning to the decisions of this Court that convictions obtained by the use of involuntary confessions must be set aside as not according the defendant due process of law.

If petitioner were mentally competent it is conceivable that despite his prolonged questioning in a box-like room by three law enforcement officers who were "in and out," his confession could be viewed as voluntary. Petitioner was not mentally competent. He had spent the four years prior to his arrest in a Government hospital under treatment for his insanity. At the time the alleged crime was committed

petitioner was over-leave from the mental hospital on a ten-day release in the custody of his sister. Every doctor who examined petitioner from 1944 to 1949—and there were many—agreed that petitioner was mentally incompetent or insane. Even petitioner's untrained jailers conceded that petitioner showed signs of insanity after his confession while still confined to jail awaiting trial (R. 85). Dr. Moorer, a doctor for the State of Alabama, examined petitioner in April, 1949, and diagnosed petitioner as a schizophrenic, paranoid type, insane, incompetent, and stated that he should be placed in an insane hospital (R. 129).

The lunacy commission appointed to examine petitioner by the Circuit Court Judge was unanimously of the opinion that petitioner was insane at the time the crime was committed in April, 1948, and when it examined petitioner in July, 1949. The severity of petitioner's mental derangement may be judged from the fact that he was required to remain under treatment in an Alabama insane hospital for an additional four years after being placed in the custody of the lunacy commission. The doctors who examined petitioner and were questioned on the subject stated that it was their opinion that petitioner was most probably insane and incompetent at the time of his alleged confession (R. 40, 41, 54).

Does the "confession" of such a defendant after nine or ten hours of questioning constitute a voluntary confession? Can a conviction based on such a confession be valid within the due process provision of the United States Constitution? We submit that the use of petitioner's confession is repugnant to "that fundamental fairness essential to the very concept of justice." **Lisenba v. California**, 314 U. S. 219, 236, 62 S. Ct. 280.

Under the law of Alabama, confessions are prima facie inadmissible, and the state has the burden of overcoming the presumption of law that they are obtained by undue

influence, and they must affirmatively appear to have been voluntarily made before they are admissible. **McCulars v. State**, 208 Ala. 182, 94 So. 55; **Baird v. State**, 215 Ala. 27, 109 So. 761. In Alabama the trial judge has the duty of determining whether a confession is voluntary. **Hines v. State**, 72 So. 2d 296.

Can it be that petitioner's confession was voluntary as a matter of law? Even in **Stein v. New York**, 346 U. S. 156, this Court emphasized that the test of whether a confession is voluntary is different for the normal defendant and the mentally deranged defendant. In the **Stein** case this Court stated:

> "The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal." **Stein v. New York**, supra, at page 185.

And again in the **Stein** case, at page 186, this Court emphasized that those defendants "were not young, soft, ignorant, or timid. They were not inexperienced in the ways of crime or its detection, nor were they dumb as to their rights."

Apply the plain implication of this language from the **Stein** case to petitioner. Petitioner was only twenty-five years of age at the time of his alleged arrest. He had spent the previous four years of his life in a government insane institution which adjudged him 100% mentally incompetent and insane at the very time of his arrest and alleged confession. What was "the power of resistance" of such a defendant?

In **Harris v. South Carolina**, 338 U. S. 68, 71, this Court regarded as important that the defendant was systematically questioned, that he was not advised of his rights,

that there was an absence of friends or disinterested persons, and this Court regarded his character as significant in viewing the question of whether the defendant's confession could be viewed as voluntary.

Petitioner testified at the trial. He could give no information concerning the alleged confession, however, because he had no recollection of any events for many months after his arrest (R. 166, 167, 168). This was an understandable circumstance in view of petitioner's prior history of suffering recurrently from "complete amnesia concerning his behavior" (R. 124).

> "Manifestly, if the defendant is of tender age or weak intellect, his will may be the more easily overcome by the same circumstances than that of one who is more intelligent or more mature. For this reason greater attention should be paid to such a defendant's situation and surroundings." **Curry v. State**, 203 Ala. 239, 82 So. 489, 493.

We submit that the conviction of this colored boy who had at the trial date spent the last eight years of his life in an insane asylum and who was adjudged insane almost immediately before and immediately after his confession and who was adjudged probably insane at the time of his confession by the only two doctors who examined him and were questioned on the subject, should not stand when based on a "confession" obtained from such a defendant after nine or ten hours of questioning by a series of law enforcement officers under the circumstances revealed by this record. Such convictions are miscarriages of justice "of such gravity and magnitude that they cannot be expected to happen in an enlightened system of justice, or be tolerated if they do." **Stein v. U. S.**, 346 U. S. 156, 181.

II.

At the time the State of Alabama offered petitioner's alleged confession in evidence, petitioner through his attorneys objected on the ground that it was not a voluntary confession and that petitioner lacked the mental capacity to be a witness against himself (R. 26, 88, 94, 95, 96, 97, 100, 117). On petitioner's motion for a new trial, he assigned several grounds for his motion challenging the introduction of the confession into evidence on the ground that it was not voluntary (R. X, XI, XII). The motion for new trial was overruled by the trial court.

Petitioner appealed his conviction to the Alabama Court of Appeals again challenging the admission into evidence of the confession on the ground it was not voluntary and that petitioner lacked mental capacity to give a confession. The Alabama Court of Appeals held that the duty of determining whether a confession is voluntary rests within the discretion of the trial court, and "its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears." **Blackburn v. State**, 88 So. 2d 199, 205. The Court of Appeals concluded by stating that the wide discretion vested in the trial court was not shown to have been abused and there was no error in admitting the confession in evidence.

Petitioner made application for a rehearing to the Court of Appeals, but the application was denied.

Petitioner petitioned the Supreme Court of Alabama for certiorari and urged that the Court of Appeals erred in not holding said confession to be involuntary (R. 226). This petition was denied. Petitioner applied for a rehearing to the Supreme Court of Alabama on its denial of the petition for certiorari, but the application for rehearing was denied. **Blackburn v. State of Alabama**, 88 So. 2d 205.

In none of the proceedings in the Alabama courts did petitioner's counsel invoke by name the 14th Amendment of the Constitution of the United States. Counsel for petitioner, however, did raise at every stage of the proceedings the objection to the admission of an involuntary confession which this Court has held in many decisions is a violation of the 14th Amendment to the United States Constitution.

In **Emspak v. United States**, 349 U. S. 190, the defendant sought to invoke the privilege against self incrimination. He did so by a reference to the First and Fifth Amendments to the Constitution. The Government contended that such a reference was too vague, that petitioner should have stated the nature of the objection under these Amendments upon which he relied. Conversely in this case, petitioner clearly stated his objection in a fashion so that any court could understand. In **Emspak** the defendant did not articulate the ground of his objection but gave the short rendition of the objection by referring to "the First and Fifth Amendments." This Court held that "no ritualistic formula or talismanic phrase" is required. **Emspak v. United States**, 349 U. S. 190, 194.

In **Quinn v. United States**, 349 U. S. 155, the defendant sufficiently invoked the Constitutional privilege against self incrimination by stating that he was invoking the same objections as were raised by another witness. This other witness had invoked the First and Fifth Amendments. The Government contended that witness Quinn's objection did not adequately inform the Congressional committee to whom the objection was addressed as to the basis of the objection. This Court answered this contention in plain language:

> "If an objection to a question is made in any language that a committee may reasonably be expected to understand as an attempt to invoke the privilege, it

must be respected both by the committee and a court in a prosecution under Sec. 192." QUINN v. U. S., 349 U. S. [redacted], 155, 162, 163.

In the instant case petitioner fully and clearly articulated the ground of his objection "in language that a committee (a court) may reasonably be expected to understand." In the **Emspak** and **Quinn** cases it is conceivable that the Congressional committees did not know the precise objections of the witnesses in invoking the First and Fifth Amendments. This Court recognized this fact in suggesting that the Committee could have questioned the witnesses and clarified any ambiguity. In the instant case there was no ambiguity. It is inconceivable in the light of this Court's many decisions that a court of law could be ignorant of the Constitutional protection involved in the challenge to a confession as involuntary.

The Alabama courts have fully considered the question of whether this petitioner's confession was voluntary. Their answer that it was voluntary and one upon which petitioner's conviction could rest should not be allowed to stand.

Respectfully submitted,

.....

W. H. MITCHELL, JR.,

.....

TRUMAN HOBBS,
Counsel for Petitioner.

Certificate.

I certify that I have served a copy of the foregoing petition for certiorari upon the Honorable John Patterson, Attorney General of the State of Alabama, by depositing the same in a United States Post Office with first class postage prepaid addressed to him at the Judicial Building, Dexter Avenue, Montgomery, Alabama, on this the 13 day of September, 1956.

Truman Hobbs

Truman Hobbs.

APPENDIX.

Nov. 16, 1954.

The State of Alabama—Judicial Department.

THE ALABAMA COURT OF APPEALS.

October Term, 1954-1955.

8 Div. 407.

Jesse Blackburn

v.

State.

Appeal From Colbert Circuit Court.

Price, Judge.

To an indictment charging him with robbery, defendant plead not guilty and not guilty by reason of insanity. His trial resulted in a verdict of guilty and a sentence of twenty years in the penitentiary.

The State's evidence was to the effect that Thomas Clyde Wright operated a rolling store for one W. N. Greenhill. On April 19, 1948, Mr. Wright drove the store over his regular route. He started up Crowell Hill, on the Allsboro Road, in Colbert County, after dark. At that time he had in his possession a billfold containing approximately $76.00 belonging to Mr. Greenhill and a billfold containing $51.00 of his own money. As he put his truck in "double low" he saw someone coming off the bank toward the road with something in his hand that looked like a gun. He remembered nothing further until he regained consciousness in a hospital two weeks later. At that time he had neither the billfolds nor the money.

Mr. and Mrs. Hubbard and J. C. James were on Crowell Hill and saw the rolling store stopped on the road. A

maroon colored Buick, bearing an Illinois license plate, was parked by it. These witnesses heard a "rumbling noise" like the sounds of a struggle from inside the store. Mr. James testified two colored men got into the Buick and drove away. Mr. James and Mr. Hubbard armed themselves and returned to the scene about thirty minutes later. They found Mr. Wright at the rear of the store, trying to scotch it so it would not roll down the hill. He was badly beaten, dazed and "out on his feet." They found a blood-stained tire tool and two hats inside the store.

Deputy Sheriff Stanford arrived at Crowell Hill between 10:30 and 11:30 that night and found two hats and a tire tool and blood inside the store. The articles found by him were introduced in evidence.

Dr. Gary testified he examined Mr. Wright at the hospital on the night of the alleged robbery. He was unconscious and bleeding from the ears and nose. X-rays made later showed multiple linear fractures on the skull, caused by a blunt instrument used with great force.

At the time of the alleged crime appellant was a resident of Chicago, Illinois. About a week prior thereto he came to Alabama in company with Dennis Thorne and Robert Howell for the purpose of burying his deceased brother. The trip was made in a maroon Buick with an Illinois tag. The prosecuting witness testified he had seen these men and the automobile at the home of Dennis Thorne's brother on the Allsboro Road. One of the men bought a package of cigarettes from him and paid for it with a twenty-dollar bill. On April 16, 1948, appellant married Fanny Rogers in Iuka, Mississippi. There was a wedding party that night at Jack Thorne's house. The couple spent that night at Leon Fuqua's and the next afternoon appellant left with Howell and Dennis Thorne. The next time his bride saw him was in May, 1948, when he was in the Colbert County jail.

According to the State's evidence, on May 8, 1948, after appellant was arrested and brought to Colbert County from Gary, Indiana, he confessed the crime to Deputy Sheriff Stanford. The confession was reduced to writing and signed by appellant two days later. The confession was admitted in evidence as State's Exhibit "A" on voir dire examination for the purpose of determining defendant's mental capacity at the time of making the confession. It was also admitted in evidence before the jury as State's Exhibit "D." In the confession the defendant detailed the movements of the trio from the time they left Chicago until the night of the robbery; told of his marriage to Fanny Rogers; said there was a conspiracy between the three men to rob the driver of the rolling store, which defendant said he subsequently tried to prevent. He stated that at the time of the robbery, "I carried small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it and was washed out by Burneice Moore the night we spent in Nashville. The hat officers found in rolling store I identify it as the one Robert Hal was wearing at the time of the robbery, but this hat belonged to me. I now have been presented with a heavy tire tool which officers said was found in rolling store, I identify it as the one Robert Hal used to hit the driver of the rolling store three times on the head." In the confession defendant stated he flagged the store down on the steep part of the hill. Robert Howell rushed up behind defendant as he stepped on the running board. After Robert Howell struck the driver defendant got the change from his right front pocket while Robert Howell was going through his other pockets. After leaving the scene defendant helped to count the money and received $28.00 as his share and he disposed of some checks that were in the billfolds.

For the defendant, Thomas J. Grace, a field examiner for the office of the Regional Attorney of the Veterans'

Administration, identified certain records showing that at the time of the commission of the alleged crime defendant was a 25-year-old negro man with a history of mental disorders. On July 1, 1944, at Drew Field, Florida, he was diagnosed as unfit for military service because of psychosis. The Report of Board of Medical Officers was that he had "recurrent periods of marked confusion and over-activity, assaultiveness with catatonic posturing, teeth grinding followed by severe headache and complete amnesia concerning his behavior, constitutes a threat to others when subject to such attacks," and recommended his transfer to a Veterans' Administration facility for further treatment.

On September 8, 1944, appellant was admitted to a Veterans' Administration hospital at Danville, Illinois, from Drew Field, with diagnosis of dementia praecox, simple type, and a history of hallucinations and defective judgment and insight. There, on September 11, 1944, he was given a diagnosis of "psychosis, manic depressive, manic phase." On February 14, 1948, the Danville Veterans' Hospital placed defendant on a ten-day leave of absence with his sister. He failed to return at the end of ten days and was placed on a ninety-day trial visit. On May 24, 1948, not having returned, he was formally discharged from the hospital. His diagnosis on discharge was schizophrenic reaction, paranoid type. The alleged offense occurred prior to the discharge from the hospital. Also a report of an examination by Dr. M. L. Moorer, neuropsychiatrist, April 22, 1949, with a diagnosis "Schizophrenic reaction, paranoid type. Insane, incompetent, and should be placed in insane hospital." And a rating sheet by the Veterans' Administration, showing defendant's rating to be, "Schizophrenic reaction, paranoid type, incompetent from 5-24-48."

The record discloses that after appellant's arrest he showed signs of insanity in the jail and was admitted to

Searcy Hospital for observation and report under the provisions of Articles 1 and 2 of Title 15, Code 1940, on July 29, 1948, and remained there until November 12, 1952, when he was released into the custody of Colbert County authorities as sane and competent to stand trial.

On the trial defendant testified the signatures on the bottom of each page of the purported statement to Deputy Sheriff Stanford appeared to be his signature, but the statement was not true and he had no recollection of having made or signed it. He did not remember being questioned by the sheriff or his deputy and did not remember that anything in the statement took place. He testified he did not commit the offense charged. He also testified he did not remember being in Colbert County in 1948; did not remember being in jail there in 1948, and that he did not remember getting married.

Defendant introduced depositions of Drs. Tarwater and Rowe, which were also introduced on voir dire, and are commented upon further on in this opinion.

Appellant's counsel argue: "The errors which we primarily urge for reversal hinge upon the trial court's actions in dealing with the alleged written confessions and certain allegedly confessory statements of the appellant."

After proper predicate was laid the State offered the confession in evidence.

The defendant objected to the introduction of the confession because the corpus delicti had not been proven and because the defendant could be shown not to have had the mental capacity to be a witness on May 8, 1948.

The defendant, on voir dire, introduced depositions of Dr. Harry S. Rowe, Assistant Superintendent of Searcy Hospital, and Dr. J. S. Tarwater, Superintendent of Alabama State Hospitals. The report of the lunacy commission appointed July 26, 1948, to investigate the sanity of

defendant was attached as Exhibit "B" to each of said depositions. This report was signed by Drs. Tarwater, Rowe and A. M. Richards, and recites in part:

"It is the opinion of each of us, and our opinion jointly and collectively, that the said Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948, was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."

Dr. Rowe stated in answer to interrogatories that defendant was suffering from schizophrenia of the paranoid type; in his opinion he was insane at the time of the commission of the crime.

Dr. Tarwater stated that the commission, from a study of the reports and the findings in the case, immediately after hospitalization, was of the opinion that defendant was mentally ill and incompetent during April, 1948, and during the period from January 1, 1948, to July 29, 1948.

The State introduced the cross-interrogatories of Drs. Rowe and Tarwater and the depositions of Dr. A. M. Richards, a staff physician at Searcy Hospital, and a member of the lunacy commission.

Dr. Rowe stated that at times while in the hospital defendant's thinking and behavior was normal, and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

Dr. Tarwater stated defendant exhibited abnormal thinking and abnormal behavior for several months after his admission to the hospital. In his opinion defendant was

mentally incompetent on April 19, 1948, and was mentally ill and mentally incompetent on May 8, 1948.

Dr. Richards stated in answer to direct interrogatories that he, Dr. Tarwater and Dr. Rowe found, as stated in the report, that defendant was insane at the time of the commission of the crime for which he was charged. In answer to cross-interrogatories he stated that defendant had been normal mentally since he first saw him; that at times his behavior was normal; his thinking and his behavior was more normal than abnormal; at times he was rational in his thinking and behavior; he did not think defendant had lucid intervals; his mental condition on April 19, 1948, was normal, and his mental condition on May 8, 1948, was good; that defendant did not have psychotic episodes at any time that he saw him.

Deputy Sheriff Stanford then testified for the State that he questioned defendant in the Colbert County jail on May 8, 1954, for five or six hours and returned after supper and continued the questioning. The greater part of the time he was alone with the defendant, but the Sheriff and Deputy Bo Riner were present some of the time. Defendant answered questions like any normal person he has examined. He told his name, address, his past occupations and the date he left Chicago. The witness reduced the statement to writing and read it to defendant in the presence of the Sheriff, Mr. Riner, and Mrs. Craig, the notary public, and the defendant signed it. There was nothing about the defendant's appearance to indicate that he was a sick man. No threats or offers of reward were made to induce defendant to sign the statement.

The State again offered the confession as State's Exhibit "A" only for the purpose of the voir dire hearing. Defendant objected to its introduction because it was taken over a period of hours; it could not reflect the continuity of thought on the part of the witness; could not

determine in any way his mental capacity to make the statement; it is otherwise shown to be involuntary; the corpus delicti has not been proven; the statement is incompetent and illegal, and by express statement of Mr. Stanford the statement was put down in his words and not those of defendant. The court overruled the objection, stating that the confession was being received at that time only for the court's inspection on the question of whether it should be admitted later for the jury's consideration. Defendant duly excepted.

The jury returned to the court room and the State again laid a predicate for the introduction of the confession. On cross-examination deputy Sanford testified that on May 8, 1948, he talked with the defendant from 1:00 to 6:00 and from 7:00 until 10:00 or eleven that night. Most of the time they were in a room 4x6 or 6x8; part of the time the sheriff and another deputy were present; they might have worn their guns and badges; after staying in jail for some time defendant began to shown signs of insanity. The witness also testified the defendant talked rationally and gave sensible answers at the time the confession was made. His eyes were clear and he did not appear to be nervous. The State then offered the confession in evidence as Exhibit "D" to the witness' testimony. The court overruled defendant's objection and defendant excepted.

Appellant contends the facts testified to by the witness Stanford show that the confession was involuntary, and its admission before the jury was reversible error.

There was no testimony tending to contradict the evidence on the part of the State that the confession was not induced by duress or promise. The fact that a confession was made while the maker was under arrest does not render it inadmissible. **Johnson v. State**, 242 Ala. 278, 5

So. 2d 632. Nor is the confession rendered inadmissible by virtue of the fact that the officers to whom the confession was made were armed. **McElroy v. State**, 75 Ala. 9; **Hornsby v. State**, 94 Ala. 55, 10 So. 522; **Flanigan v. State**, 247 Ala. 642, 25 So. 2d 685; **Phillips v. State**, 248 Ala. 510, 28 So. 2d 542. "Likewise, for a confession to be voluntary it is not necessary that it proceed wholly at the suggestion of the prisoner: Levison v. State, 54 Ala. 520." Nor is it rendered involuntary because not verbatim as related by the prisoner. If its transcription is substantially as related and affirmed by the prisoner as correct, it is none the less admissible. 20 Am. Jur. 427, Sec. 492." **Dennison v. State**, 259 Ala. 424, 66 So. 2d 552.

In answer to counsel's contention that the confession was involuntary because of defendant's mental incompetence, we quote further from **Dennison v. State**, supra:

"In this connection it is to be observed that the voluntariness of a confession is not affected by the fact that the accused was not in full possession of her faculties, although that is a circumstance to be considered by the jury in weighing its verity. Vinzant v. State, 28 Ala. App. 220, 180 So. 736; Smith v. State, 25 Ala. App. 297, 145 So. 504; Finch v. State, 81 Ala. 41, 1 So. 565; 22 C. J. S., Criminal Law, Sec. 828, page 1451."

"We treated of this latter principal in the recent case of **Redwine v. State**, 258 Ala. 196, 61 So. 2d 724, and there cited numerous authorities. The rule was deduced that the mere fact that accused was not in full possession of his mental faculties when the confession was made would not render it inadmissible, but only affected its weight to be accorded by the jury; or was provable merely to support other evidence that the statement was not voluntary. To render such confession inadmissible on that ground alone the mania must have been such that accused was either an 'idiot' or a 'lunatic during lunacy.'"

"Of course, the duty of determining whether a confession is voluntary rests within the discretion of the trial court, and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears. We conclude the wide discretion vested in the court is not shown here to have been abused and there was no error in admitting the confession in evidence."

Counsel argue: "There is in this record (other than in the alleged confession) a total lack of evidence, either direct or circumstantial, that there was a taking and carrying away of property from the person or from within the presence of the prosecuting witness," therefore, there was not sufficient proof of the corpus delicti to justify the admission in evidence of the confession.

"Circumstantial evidence may afford satisfactory proof of the corpus delicti and if facts are presented from which the jury may reasonably infer the crime has been committed, the question must be submitted to the jury, and other evidence tending to implicate the accused is thereby rendered admissible. * * *" **Phillips v. State**, 248 Ala. 510, 28 So. 2d 542.

In 46 Am. Jur., Robbery, p. 162, Sec. 51, it is stated: "Under the rule that all the elements of the corpus delicti may be proved by presumptive or circumstantial evidence, which prevails in most jurisdictions, it has been held that the commission of a robbery is sufficiently established by proof that the victim had valuables on his person at the time of being assaulted, beaten, and rendered unconscious, and that they were missing when he regained consciousness." See also 77 C. J. S., Robbery "corpus delicti", p. 495, Sec. 47.

The testimony of the prosecuting witness, given before the confession was admitted in evidence, afforded reasonable inference of the commission of the crime and was

sufficient proof of the corpus delicti to permit the introduction of the confession.

We find no merit in the argument advanced by appellant's counsel that reversible error was committed by the court in admitting the confession as State's Exhibit A on voir dire. We quote from counsel's argument: "It is an inescapable conclusion that hearing the reading of the confession on voir dire influenced the court to admit it on the case in chief. The court should have denied a hearing or examination of the alleged confession at this point and ruled on its admissibility subsequently in the light of pertinent and competent evidence. In admitting the confession on voir dire, the court prejudiced the rights of appellant and committed error warranting reversal."

Of course, the sole question before the court on voir dire was whether the confession was admissible because voluntary or inadmissible because involuntary, and if the accused had other "pertinent and competent evidence" on the question of its inadmissibility it was incumbent upon him to present it before the court determined that question. After the court admits the confession the evidence given before the jury regarding the manner in which the confession was obtained is for the purpose of enabling the jury to determine its weight and value as evidence.

In **Vernon v. State**, 239 Ala. 593, 196 So. 96, it is said: "Extra judicial confessions of guilt by an accused on trial for crime are prima facie involuntary, and the burden rests on the State to overcome this prima facie infirmity by evidence satisfactory to the court trying the case that the confession was voluntarily made, before such confession can be received in evidence. It is the right of the accused to controvert evidence offered in laying such predicate by cross-examination, or by evidence aliunde, but such countervailing evidence impeaching the predicate to be successful must be offered on the voir dire, before the con-

fession is admitted. Lockett v. State, 218 Ala. 40, 117 So. 457; Cook v. State, 16 Ala. App. 390, 78 So. 306; Pope v. State, 183 Ala. 61, 63 So. 71; Jackson v. State, 83 Ala. 76, 3 So. 847."

"If such countervailing evidence is not offered until after the preliminary question of the admissibility of the confession is passed on by the court it goes to the jury on the credibility of the confession only. **Lockett v. State,** supra; Cook v. State, supra."

As heretofore stated, the witness Stanford testified he found two hats and a tire tool inside the rolling store. Defendant's confession referred to and identified a wrench and a tire tool used in beating the victim and a hat belonging to defendant but which was worn by Robert Howell at the time of the robbery. The continued custody of these articles was accounted for by the State, and the articles together with the testimony of witness Stanford as to the defendant's identification of them at the time of making the confession were properly admitted in evidence in corroboration of the confession, **Phillips v. State,** 248 Ala. 516, 28 So. 2d 542; **Vernon v. State,** supra, and was not error as against the contention that "the statements elicited from Stanford with reference to these exhibits called for separate confessions for which a predicate should have been, but was not laid."

There was sufficient evidence of defendant's guilt to make it a question for the jury; hence there was no error in refusing the requested general charge. The trial court and the jury saw the witnesses and heard the evidence and we cannot say the verdict was so contrary to the great weight of the evidence as to put the trial court in error for refusing to grant the motion for a new trial.

The judgment of the lower court is affirmed.

Affirmed.